

FAX TRANSMISSION

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To: Scott R. Pribnow **Date:** March 11, 2002
Fax #: 651-736-3833 **Pages:** 2, including this cover sheet.
From: Karen Creasy, Office of Petitions
Subject: Application No. 09/432,944 Dkt. No. 46835USA5D

Thank you for your petition to withdraw from issue received by facsimile transmission on February 25, 2002. Unfortunately, because of the mail delays, finance records disclose receipt of the issue fee on January 28, 2002, which is after the due date for payment of the issue fee. In order to ascertain whether the issue fee was timely submitted, please provide me with a copy of the previously filed Issue Fee Transmittal Form PTOL-85(b) which bears a certificate of mailing on or before the due date for payment thereof.

In view of the recent delays in the delivery of mail to the Office, the PTO has established a policy for accepting duplicate submissions, as set forth below.

A. Requirements of 37 CFR 1.8

If the original paper was mailed using the certificate of mailing procedure under 37 CFR 1.8, then the Office shall consider the (faxed duplicate copy of the) reply to be timely submitted if applicant submits:

(1) a duplicate copy of the previously mailed reply that includes a certificate of mailing which is signed and indicates the date of mailing (the certificate of mailing must be signed and dated); and

(2) a statement that the reply was previously mailed to the USPTO on the date indicated in the certificate of mailing.

B. What is an Acceptable Statement?

While a statement is required, what qualifies as the "statement" should be liberally interpreted. Thus, it can be part of the fax transmittal cover sheet, and it may simply be:

"This is a copy of correspondence that was mailed to the USPTO on ____ date." or

"This is a copy of an amendment that was mailed to the USPTO on the date specified in the certificate of mailing."

The statement (even on a fax transmittal cover sheet) **must be signed by a patent practitioner (of record or per Rule 1.34 with a registration number), one or more of the applicants, an assignee, or the person who mailed the original paper.**

Unless an acceptable statement is present, it would **not** be appropriate to accept an "apparent" copy of a previously mailed reply. Thus, without a statement, a document with a stamp on it of "Duplicate" or "Copy" is, by itself, not sufficient. Note: for duplicates of correspondence filed before or after the mail delay period, a statement in compliance with 37 CFR 1.8(b)(3) would always be required as it is clearly not acceptable to just accept a duplicate, stamped "Duplicate" or "Copy."

Therefore, would you please provide me with a copy of the previously mailed Issue Fee Transmittal Form PTOL-85(b) along with a statement of mailing of the Issue Fee Transmittal Form pursuant to the guidelines set forth above. The inconvenience caused you in this matter is sincerely regretted.

The above may be submitted by facsimile transmission to the number indicated above and to my attention. It would be most appreciated if this could be sent to me within the next couple of days so that a decision on the petition will not be delayed.

Your patience and understanding in this matter is sincerely appreciated.